

ST 00-0118-GIL 06/30/2000 FOOD, DRUGS & MEDICAL APPLIANCES

Food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. (This is a GIL).

June 30, 2000

Dear Xxxxx:

This letter is in response to your letter dated May 11, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY sells nutritional, dietary, and skin care products through a multi-level network of independent distributors. We are considered an 'MLM' or multi-level marketer such as Amway, Avon, etc. Our physical location is in CITY/STATE. We charge tax based on where we ship to. COMPANY files one Illinois State Sales Tax Return rather than each distributor filing a return with Illinois.

I have enclosed a label of our new product, PRODUCT. We need a letter ruling or binding opinion if this is taxable or exempt based on your state's tax laws, regulations, etc. Also, to the best of my knowledge, the food is sold by distributors that do not provide a place for consumption of the products on the premises. My fax number is ##### or my e-mail address is #####.

If you need additional information for your determination of taxability, please call me at #####. Thank you.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding tax on food, medicine and medical appliances under the Retailers' Occupation Tax Act. The regulation explains that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1). A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See Section 130.310(c)(1).

Based upon the information attached to your letter, PRODUCT may qualify as a food product or medicine or drug and would be subject to the 1% (plus local tax) low rate of tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.